

ON THE *Trade in America*  
IMPOSITION of 4  $\frac{1}{2}$  PER CENT. 53.

COLLECTED ON

*K* G R E N A D A,

AND THE

SOUTHERN CHARIBBEE ISLANDS,

BY

Virtue of His MAJESTY'S LETTERS PATENT,

Under Pretence of the

PREROGATIVE ROYAL,

WITHOUT

GRANT OF PARLIAMENT.

---

*Are these Things so?*

---



---

L O N D O N:

Printed for J. ALMON, opposite *Burlington-House* in  
Piccadilly. 1774.

[Price One Shilling.]



---

TO THE  
RIGHT HONOURABLE  
THE  
EARL OF *DARTMOUTH*,  
One of His MAJESTY'S Principal SECRETARIES  
of STATE.

MY LORD,

**I** Take the Liberty of addressing the following Sheets to your Lordship, for two Reasons ;—the one is, because the Matters they treat of have a peculiar Claim to your Consideration, from the high and important Station, which you Lordship so worthily fills.—The other, that your Lordship's known Integrity and Honour, give me the strongest possible Confidence, that,  
if



DEDICATION.

if you find the Facts to be as I have stated them, the Inhabitants and Proprietors of the ceded Islands, may be assured your Lordship will make a Point of representing them in their true Light to his MAJESTY; which will be sufficient to insure effectual Redress.

I have the honour to be, with great Respect,

MY LORD,

*Your Lordship's*

*Most obedient humble Servant,*

THE AUTHOR.



---

## CONSIDERATIONS, &c.

AS the time is now approaching in which the case of Campbell and Hall, ought to be argued and *adjudged* in the Court of King's-Bench, it will not be improper to call the public attention towards it, as it is a matter of the utmost importance. Indeed, since the cause of ship money, no point of equal consequence has ever been brought before any British court of judicature for decision; nor will the liberties of Britain be much less affected by the determination, as the question is simply this,—*Whether the king by his prerogative is, or is not, absolute master of the property of his subjects in the colonies, with a right to dispose of the whole, or any part thereof,*

B

*thereof, at his arbitrary will and pleasure?*

That such is the importance of the point now in dispute will appear from the following state of the case.

An action was some time since brought by Alexander Campbell, Esq; a planter at Grenada, against Mr. Hall, a collector of the customs, for the recovery of the value of certain sugars, received by him there, under pretence they were due to the crown by virtue of his Majesty's letters patent, which imposed a duty of  $4\frac{1}{2}$  *per cent.* on all the commodities, the growth of, and exported from that, and the other ceded islands—the legality of this tax, thus imposed without authority of parliament was the matter to be tried!

Upon this cause coming on to be heard, before a very respectable special jury of merchants and a numerous auditory, whose property was to be affected by the decision, Lord Chief Justice Mansfield, (who as a judge, I should have supposed ought to have been ignorant of the merits of the cause he was to try until he heard it) at the very beginning of the trial directed the

the

the jury to find a special verdict, informing them, that the matter could not be decided by them, it being a question of law, which must be left to the determination of the court. I do not pretend to be a lawyer, but a man must be void of common sense, not to see that if such a mode of proceeding is allowed, that noble bulwark of English liberty--a *trial by jury*, totters from its foundation. If the jury, at the judge's direction are obliged to find a special verdict, may it not be feared that such direction will too often be given when the king's interest is concerned—and will they not by that means have the power of determining every question between the crown and the subject!—

That the jury who knew not what the merits of the cause were, should consent to such a verdict, did not astonish me: but that the plaintiff's council should agree thereto, is what I could by no means comprehend; nor am I at all satisfied with the reasons which have been since given for their acquiescence.

To ' A verdict in favour of the plaintiff,  
' (say they) would not have determined the



' general question, but only the particular  
 ' case, *viz.* that the collector had no right  
 ' to take the identical sugars for which  
 ' that action was brought—but that as the  
 ' king's officers would continue to collect  
 ' the like duties, the inhabitants would  
 ' not be relieved from the oppression they  
 ' complain of, except in such single in-  
 ' stances as might happen from meeting a  
 ' collector in England at a time when some  
 ' one might be furnished with proofs that  
 ' such *illegal* duty had been exacted.'

What is this but saying, that the King  
 will not submit a cause wherein his interest  
 is concerned to the *legal* decision of a jury?  
 An assertion, which, I think tends more to  
 his Majesty's dishonour than any thing that  
 has been falsely suggested hitherto by dis-  
 appointed faction, and, if true, ought more  
 to alarm us, than any other act of admini-  
 stration whatsoever: for under pretence  
 that the point before the jury contains mat-  
 ter of law which they cannot judge of,  
 may they not at pleasure be rendered use-  
 less?—And I take upon me to assert, with  
 all deference and respect to the abilities of  
 Lord Chief Justice Mansfield, that a ques-  
 tion

tion can hardly come before a jury wherein there is less legal difficulty, or upon which they can be more competent to determine.— Was any thing more necessary in the present case than that they should be able to read the following clause inserted in the declaration of rights;—a condition under which King William and his successors have hitherto enjoyed the crown of these realms!

“ The levying money to, or for the  
 “ use of the crown, by pretence of prerogative, or without grant of parliament,  
 “ for longer time, or in any other manner than the same is or shall be granted,  
 “ is illegal.”

Is it necessary *now* to leave it to the judges to determine whether that declaration of the whole legislature is law? Is it a point of law, whether the levying the  $4\frac{1}{2}$  per cent. on all the commodities of the growth or produce of the ceded islands, is with or without grant of parliament? Surely the latter is a matter of fact, of which any man of common sense may judge with as much precision, as if he had all the cases cited in Viner's abridgement by heart. And that the tax is levied solely under pretence of the prerogative royal, is also a  
 matter



( 6 )  
matter of fact, which plainly appears from the letters patent themselves.

It is therefore obvious to every one, that the difficulty of deciding the legal merits of the question was not the reason why Lord Mansfield directed the jury to find a special verdict :—nor if such difficulty had, in his opinion existed, ought that to have induced him to decline permitting the merits of the cause to have been heard, that the legal doubts might have appeared to the satisfaction of all the parties concerned : the jury too would then have been able to have determined whether they had any such doubts ; and if they had not, but had found a general verdict for the plaintiff, we should have known, whether we have any minister in this kingdom hardy enough to have advised the king to continue an exaction, which had been declared illegal by *that most constitutional of all determinations*, the verdict of a jury !—What would have been the consequence if he had done so, I leave to the judgment of every man.

I am aware it may be asked me, what necessity there was for the planter to bring his action to be tried by an English jury ? Are not the collectors of the customs amenable



nable to the courts of judicature in America ; and are not trials by jury as much the right of the British colonists as of their fellow subjects in Great Britain ? Is there one law for British subjects at home, and another in the British dominions abroad ?—It is to be wished these questions could be answered as they ought \*. But a short narrative of what has already passed in one of the ceded islands will be the best answer to them.

The legality of this tax was contested with the crown in the island of St. Vincent's, by Richard Otley, Esq; in the year 1767, who brought an action of trover against the collector there, for seizing his sugars for the payment of the above-mentioned tax of  $4\frac{1}{2}$  *per cent.* and on 15 March 1768 the cause came on to be tried, when a special verdict was found by the jury, subject to the opinion of the court of Common Pleas in the said island.

\* By a late determination of the privy council we are given to understand, that British subjects may be deprived of their lands, without any legal process, at the will of the governor and council, upon suggestion that they have not complied with the terms of their original grants.

On

On the 25th June 1768 the court gave judgment in favour of the plaintiff; the defendant thereupon brought a writ of error on the aforesaid judgment in the Court of Errors there, and the judgment so given was affirmed—From these judgments the collector appealed to his Majesty in council, which appeal has never since been prosecuted.

Mr. Otley indeed came over to England with that intent, but has *been prevailed on* to drop the prosecution.

It will be right to inform the reader that it is held for law, throughout the West Indies, that in all causes tried in any of the common law courts there, if either party insist on a special verdict, the jury are bound to find one; as a foundation for an appeal to a superior jurisdiction; from whence lays a further appeal to the King in council.

From this state of facts it is evident the planter has no chance of having his right decided by a *jury* in the West Indies. An appeal is the certain consequence of a suit brought against a collector there, and the expence of such appeal few people, who have estates to settle, can bear; and,  
amongst

amongst the few who can, they will probably be so connected, with *Receivers-General, Governors, or Collectors*, that means may easily be found to prevent their prosecuting the matter to a final decision. The only chance then of redress which was left, was by a trial before an English jury ;—this chance the planter is now in danger of being deprived of, by Lord M———'s inducing the jury to bring in a special verdict, without an hearing, by which means the merits of the cause are endeavoured to be kept from the knowledge of the public ; and in the mean time it is much to be feared that the determination will be procrastinated, until the plaintiff, wearied with delay and expence, intimidated by threats, or induced by promises, may be forced, frightened, or allured to drop the prosecution of the suit, in case it should not first *abate* by his death.

It shall be my task, however, to lay the particulars of this important question before the public, and I doubt not but I shall be able to shew that the levying this tax is contrary to law or equity, and, if sub-

C

mitted



mitted to, will probably tend to the subversion of the liberties of every British subject in the colonies.

By the letters patent of the 20th June 1764, as a reason for levying this tax, it is recited that “ a certain impost or custom  
 “ of four pounds and a half in specie for  
 “ every 100 lb. weight of the commodi-  
 “ ties of the growth and produce of the  
 “ island of Barbadoes, and of the Leeward  
 “ Caribbee Islands in America, shipped off  
 “ from the same, *or any of them*, is paid  
 “ and payable to the King, his heirs and  
 “ successors; and that as the island of  
 “ Grenada was conquered by his Majesty  
 “ during the late war, and had been ceded  
 “ and secured to him by the then late  
 “ treaty of peace,—It was reasonable and  
 “ expedient, and of importance to his  
 “ Majesty’s *other sugar islands*, that the  
 “ like duty should take place in his Ma-  
 “ jesty’s said island of Grenada;—his Ma-  
 “ jesty did think fit, and his royal will  
 “ and pleasure was, and he did by the  
 “ said letters patent, *by virtue of his pre-  
 “ rogative royal*, order, direct, and ap-  
 “ point,

“ point, that an impost or custom of  
 “  $4\frac{1}{2}$  *per cent.* in specie shall be, from  
 “ and after the 29th September next en-  
 “ suing the date of the said presents,  
 “ raised and paid to his Majesty, his heirs  
 “ and successors, for and upon all dead  
 “ commodities of the growth or produce  
 “ of his said island of Grenada, &c. un-  
 “ der such \* *penalties and forfeitures* as the  
 “ said impost is and may now be collected,  
 “ paid and levied in his Majesty's said  
 “ island of Barbadoes, and his said Lee-  
 “ ward Islands.”

Would not any person suppose, from  
 the above recitals, that this duty of  $4\frac{1}{2}$   
*per cent.* was paid and payable upon the ex-  
 portation of the commodities of the growth  
 of *all* the sugar islands—nothing however  
 is less true in fact—no duty of  $4\frac{1}{2}$  *per*  
*cent.* is payable for goods shipped from and  
 of the growth of Tortola and Anegada,  
 which are part of the Leeward Caribbee  
 Islands, under the government of Sir Ralph

\* Thus we see a tax is not only imposed, but even  
 penalties and forfeitures inflicted by virtue of the pre-  
 rogative royal.

Payne—nor for any goods shipped from Jamaica, the principal sugar island belonging to the crown, nor on any commodities the growth of, or exported from Providence, or any of the Bahama Islands : and what is still more in point, it is not now paid or payable in any island, but by virtue of an act of the representatives of the people, neither was such act passed but upon a good and valuable consideration—what that consideration was I shall shew in the next place ;—and as Barbadoes is particularly cited as the precedent, in the letters patent, I shall trouble the public with the history of this impost in that island ; by which it will appear, that it was there the price paid to the crown for the absolute purchase of the fee simple of the lands. —That I may not take up more of the reader's time than is absolutely necessary to put this matter in a clear light, I shall only state the facts as briefly as possible, referring them for further particulars to the laws of Barbadoes, and Lord Clarendon's History of his own Life, here related.

‘ The



‘ The island of Barbadoes was granted  
 ‘ by King James I. to the Earl of Car-  
 ‘ lisle and his heirs for ever, who granted  
 ‘ 10,000 acres to Marmaduke Royden,  
 ‘ ——— Farmer, and sundry other people,  
 ‘ who went over there, and planted the  
 ‘ same, at considerable expence. The  
 ‘ said Earl also sent a governor and peo-  
 ‘ ple there, and enjoyed it to his death,  
 ‘ and, by his will, settled it for the pay-  
 ‘ ment of his debts, which were very  
 ‘ great.

‘ About 1647, the Earl of Carlisle, son  
 ‘ and heir of the former Earl, made a  
 ‘ lease of the island to Lord Willoughby  
 ‘ of Parham for twenty-one years, who  
 ‘ was to account with Lord Carlisle for a  
 ‘ moiety of the profits which should arise  
 ‘ out of the said plantation, and retain the  
 ‘ remainder to his own use; who was  
 ‘ likewise to receive his Majesty’s com-  
 ‘ mission appointing him governor of the  
 ‘ said islands.

‘ But before this agreement could be  
 ‘ well executed, the island was reduced to  
 ‘ the obedience of the parliament, and of  
 ‘ Cromwell, and a governor appointed by  
 ‘ them,

‘ them, Lord Willoughby being sent back  
 ‘ to England.

‘ During the continuance of the civil  
 ‘ wars, many people, to avoid their fatal  
 ‘ effects, had emigrated, with their fami-  
 ‘ lies and fortunes, to that island, and set-  
 ‘ tled upon the vacant lands, without any  
 ‘ grants or titles either from the crown or  
 ‘ the proprietor, and had, in a course of  
 ‘ years, brought their plantations to great  
 ‘ perfection, to the mutual advantage of  
 ‘ themselves and the mother country.

‘ At the restoration, Lord Willoughby,  
 ‘ who had still eight or nine years to come  
 ‘ of his lease, applied to the King and  
 ‘ Lord Carlisle, claiming from the latter  
 ‘ the benefit of his agreement during the  
 ‘ remainder of his term, and desiring the  
 ‘ King to renew his commission as gover-  
 ‘ nor of Barbadoes, to strengthen his au-  
 ‘ thority, which he had then reason to  
 ‘ think would be disputed;—for the inha-  
 ‘ bitants who, as before-mentioned, had  
 ‘ settled on the vacant lands, began now  
 ‘ to apprehend that they must depend  
 ‘ upon the good will of the Earl of Car-  
 ‘ lisle and Lord Willoughby for the en-  
 ‘ joyment

' joyment of their estates'—" all these  
 " men joined in petitioning the King for  
 " his protection, and that they might not  
 " be oppressed by these two Lords."—  
 ' They alledged, " that they were the  
 " King's subjects, and had repaired thi-  
 " ther as to a desolate place, and by their  
 " industry obtained a livelihood there,  
 " and that if they were then left to those  
 " Lords to ransom themselves and com-  
 " pound for their estates, they must leave  
 " the country; and the plantation would  
 " be destroyed, which yielded his Ma-  
 " jesty so good a revenue: that they  
 " could defend themselves against the  
 " Earl of Carlisle's title, if his Majesty  
 " did not countenance it by a new grant  
 " of the government to the Lord Wil-  
 " loughby: and therefore they were suitors  
 " to his Majesty, that he would not de-  
 " stroy them by that countenance."

' During this contention the Earl of  
 ' Carlisle died, having first devised his in-  
 ' terest in the island of Barbadoes to Lord  
 ' Kinnoul, and the planters positively in-  
 ' sisted,' " that the charter granted to  
 " the Earl of Carlisle was void in point of  
 " law,



“ law, and prayed they might have leave  
 “ to prosecute the repeal of it in his Ma-  
 “ jesty’s name, and at their own charge,  
 “ and offered to consent to an imposition  
 “ of so much in the hundred as would  
 “ raise a very considerable sum of money,  
 “ to be paid to his Majesty for the confir-  
 “ mation of their titles.”

‘ Upon considering the several circum-  
 ‘ stances of the case, his Majesty thought  
 ‘ proper to refer the consideration of the  
 ‘ validity and legality of the patent to his  
 ‘ council at law, who reported that the  
 ‘ patent was void—but upon his Majesty  
 ‘ referring the whole matter to the Lords  
 ‘ of Council, they were unanimously of  
 ‘ opinion, not to advise his Majesty to  
 ‘ cause the patent to be called in question,  
 ‘ but to make such allowance and com-  
 ‘ pensation to Lord Kinnoul as should in-  
 ‘ duce him to procure the patent to be  
 ‘ brought in and surrendered.’ This course  
 was accordingly taken, and the patent sur-  
 rendered.

‘ Lord Willoughby, in consequence of  
 ‘ these arrangements, was sent over go-  
 ‘ vernor, and the assembly of Barbadoes  
 ‘ granted

' granted a tax of  $4 \frac{1}{2}$  *per cent.* to his Ma.  
 ' jesty for the purposes in the act men-  
 ' tioned, and *for a confirmation of their*  
 ' *titles*, agreeable to the promises made  
 ' by their agents on that behalf : but it  
 ' happened that the proprietors of the  
 ' 10,000 acres before-mentioned could not  
 ' be prevailed on by any means to consent  
 ' to such tax on their estates ; for those  
 ' gentlemen alledged, that they were satis-  
 ' fied with the title they had under Lord  
 ' Carlisle's patent, and were ready to de-  
 ' fend themselves, at law, against the  
 ' crown or any person who disputed it.'  
 And such was the justice of their case as to  
 prevent the bill's passing, until a proviso  
 was inserted therein to except the said  
 10,000 acres from the payment of the said  
 tax—and a proviso was also at the same  
 time inserted, that no confirmation of the  
 titles to that tract of land was thereby  
 given. And it is remarkable that, to the  
 present hour, there is no authority or co-  
 lour for levying the tax or duty of  $4 \frac{1}{2}$  *per*  
*cent.* on that tract of land in Barbadoes,  
 consisting of 10,000 acres, formerly called  
 by the name of the Merchant Adventu-  
 rers Land.

D

It

It would be natural to conclude, upon reading the letters patent of the 20th June 1764, that the tax of  $4\frac{1}{2}$  *per cent.* therein mentioned was levied by virtue of the prerogative royal, but it is well worthy observation, that even in the arbitrary reign of Charles the Second, such an exertion of prerogative was not so much as thought of, but, on the contrary, Lord Willoughby was directed to make what haste he could to Barbadoes, “ *and to call an assembly, to*  
 “ the end that such an imposition might  
 “ be agreed upon to be paid to his Ma-  
 “ jesty as should be reasonable, *in confi-*  
 “ *deration of the great benefit they had al-*  
 “ *ready, and should still enjoy, in being con-*  
 “ *tinued and secured in their several planta-*  
 “ *tions,* in which as yet they were as it were  
 “ but *tenants at will*, having no other pre-  
 “ tence of right but the possession : and  
 “ therefore that these merchants and plan-  
 “ ters, who had petitioned the King,  
 “ should, according to their obligation  
 “ and promise made by them to his Ma-  
 “ jesty, use all their credit with those in  
 “ the island, that the imposition might  
 “ arise to such a proportion, that the re-  
 “ venue



“ venue might answer the ends proposed.”

This account of Lord Clarendon would have been sufficient to have shewn what I have before asserted, that this duty of  $4\frac{1}{2}$  *per cent.* was the price paid by the inhabitants of Barbadoes for the purchase of their lands, had no other evidence of it existed; but the clause in the act of assembly which imposed it, exempting those lands which were held by another title from payment of the like duty, makes the matter clear to a demonstration. Is it possible to believe that a minister, upon such a precedent, could advise the King, by virtue of his prerogative royal, to levy  $4\frac{1}{2}$  *per cent.* on the possessions of his subjects in the ceded islands?

Mr. Grenville, under whose administration this imposition was laid, could not be ignorant of these facts; and though it is insinuated in the letters patent, that this tax was laid in the ceded islands, in order to put them on an equality with the other sugar islands, he was well aware such a pretence was too weak to establish such a burthen; he must have known that nei-

ther Jamaica, Anegada, or Tortola paid it, and that when an attempt was made in 1717 to impose such a tax on those islands, by virtue of the royal prerogative, the then Attorney General (afterwards Lord Lechmere) being consulted, honestly replied, That the person who should advise his Majesty to such a step, would be guilty of high treason. These facts being so notorious, it was impossible the ministers could be ignorant of them, and I doubt not, it was for this reason we find the letters patent imposing this tax, prefaced with, “Whereas the island of Grenada was *con-* “*quered by us* during the late war, &c.” intending thereby to support those pretensions of equality and expedience which they knew must, on the strictest examination, appear to be false, by insinuating that his Majesty has a power of imposing what laws he pleases on such countries as may be conquered by his subjects.—To dispute this doctrine is not my present purpose, because whether true or false, it is not applicable to the point in question, and I shall therefore content myself with shewing, that if his Majesty had any such right, he

he long since waved and surrendered it, not only to such individuals as have settled in the ceded islands, but also to the public of Great Britain.

On the 7th of October, 1763, his Majesty published his royal proclamation, wherein ‘ after reciting that by the treaty  
‘ of peace his Majesty had acquired sundry  
‘ lands and islands in America, and had  
‘ thought proper by his letters patent of  
‘ the 14th of March, 1763, to erect them  
‘ into the several governments therein particularly described, and had appointed governors over the same, with directions  
‘ that so soon as the state and condition of  
‘ the said colonies should permit, a council and assembly should be appointed and  
‘ called—“ for the purpose of making laws  
“ for the public peace, welfare, and good  
“ government of the said colonies, and of  
“ the people and inhabitants, as near as  
“ might be agreeable to the laws of England, and under such regulations and  
“ restrictions as are used in the other colonies; and in the mean time, and until  
“ such assemblies could be called as aforesaid, *All persons inhabiting or resorting*  
“ to



“ to his Majesty's said colonies might confide  
 “ in his royal protection for the enjoyment  
 “ of the benefit of the laws of his realm of  
 “ England; for which purposes his Ma-  
 “ jesty had given power under his great  
 “ seal to the governors of the said colonies  
 “ respectively, to erect and constitute  
 “ courts of judicature and public justice  
 “ within the said colonies, for the hearing  
 “ and determining all causes, as well crimi-  
 “ nal as civil, according to law and equity,  
 “ and as near as might be agreeable to the  
 “ laws of England, with liberty to all  
 “ persons who should think themselves ag-  
 “ grieved by the sentences of such courts,  
 “ in all civil cases, to appeal to *his Majesty*  
 “ in his privy council.”

By the treaty of peace, the French inha-  
 bitants of the Island of Grenada who chose  
 to quit it, had liberty to dispose of their  
 possessions, provided they were sold to Bri-  
 tish subjects; under the sanction of which  
 permission, and of the above proclamation,  
 Mr. Campbell purchased the estates ( $4\frac{1}{2}$   
*per cent.* of the produce of which have  
 annually been exacted from him since the  
 year 1765) confiding in his Majesty's royal  
 assurances

*assurances for the enjoyment of the benefit of the laws of his realm of England* : the most valuable of which benefits is the right of exemption from being arbitrarily taxed under pretence of prerogative royal.

If therefore his Majesty had any right to lay a tax on the inhabitants of Grenada as a conquered country, he most certainly gave it up by the proclamation of the 7th of October, 1763, and by the preceding one of the 14th of March, 1763, which gave the persons inhabiting, or resorting to the said island, the privileges of British subjects. If after assurances so solemnly given by his Majesty's royal proclamation, his Majesty's subjects in Grenada and the other ceded islands are to be treated as a conquered people, and as such remain liable to be stripped of their property under the pretence of prerogative, what security have they that, when at any time hereafter it may seem "reasonable and expedient" to his Majesty or his Ministers, (for its importance to the other sugar islands will always exist) an additional  $4\frac{1}{2}$  per cent. or any other proportion may not by new letters patent be levied on them—and it  
must

must be an addition to their misery to see themselves tantalized with the appearance of “ courts of judicature and public justice, “ for the hearing and determining all “ causes as near as may be agreeable to the “ laws of England,” when the liberty of appeal, which was intended to be for their benefit, is perverted to the purpose of preventing the possibility of legal redress. For the collector who receives the tax in question, not for the benefit of the public or himself, but for the King’s own use, with out account, appeals—to whom? to his Majesty himself!—who is to judge whether he chuses to exact the tax or not.

But even if such a right did exist; why was it so long before it was exercised? Why were British subjects encouraged to purchase lands from the French inhabitants, upon a supposition that no such tax was to be paid. In consequence of which they were induced to give much more for the estates than they were worth, when liable to such a deduction. Tythe taken in kind, from the plowed land in England, is reckoned equal to a fifth part of the crop, deducting the rent and the expences of tillage,



tillage; yet that tythe is taken upon the crop being severed from the ground. The lands in the West Indies are cultivated at more than three times the expence of those in England, and the King exacts near a twentieth part of the commodities after they are manufactured. The ignorance therefore of the British subjects that they were liable to such a tax, induced them to give at least 20 *per cent.* more for their lands purchased from the French than they were worth. The delay therefore of exercising this right, if it really did exist, was such an injury to individuals as ought to have prevented it altogether, even though no such assurances as those contained in the letters patent of the 7th of October, 1763, had ever been given.

There is one circumstance in which the letters patent, establishing this tax at Grenada, differs from those which impose it in the other islands.—It at the same time directs the continuance of a poll tax on all Negro slaves, which was paid under the French government. This tax the generality of the inhabitants refused to pay; in consequence of which various prosecutions

E

were

were commenced, but his Majesty's servants wisely declined bringing them to a decision, nor have any late attempts been made to enforce the collecting it. The enforcing the letters patent respecting the collection of the  $4\frac{1}{2}$  *per cent.* and not in the other instance, may appear strange and inconsistent, until the matter is explained. —The reason is, that in order to compel the payment of the poll tax, a suit must be instituted against the party refusing to pay it, and should a verdict be given in favour of the defendant (which, if any regard be had to the law of the land, must be the case) and the King, in the name of his Receiver General, appeal; the tax could not be collected, *pendente lite*; but, in the other instance, no person is permitted to ship his commodities until the  $4\frac{1}{2}$  *per cent.* duty is first paid, which duty he is put to the trouble and expence of a suit to recover back; and though he should obtain a judgment in all the courts of law in the West Indies—the King, in the person of the collector of the customs, appeals to himself; and in the mean time continues to exact the payment of the duties as before :  
and,

and, if the goods should be shipped without such payment, both ship and goods would be seized, and liable to be libelled in the Court of Admiralty, to the ruin of the voyage, and perhaps of the owners ; and therefore no master of a ship will run the hazard of taking the goods aboard under such circumstances, until the duty is first paid.

This mode of proceeding is so barefacedly iniquitous, as to require no comment. Those courts of judicature, which we had reason to hope, from his Majesty's gracious declarations, were to be instituted for protection, are by these means instruments of oppression.

Surely if they were not, when judgment is obtained in them, and his Majesty's servants think proper to appeal on his behalf—they should be directed to discontinue that conduct which such courts have adjudged to be unjust, at least until such judgment is reversed by a superior authority. But it is apparent from what has happened in the case of Mr. Otley, that a legal decision is not wished for. This tax is necessary, because it is the most eli-



gible fund on which to grant pensions, and therefore must be supported *per fas aut nefas*.

Had the King a legal title to impose this tax on Grenada, as a conquered territory, which will hardly be allowed, is it possible to believe he had the like title to tax the island of Tobago? The letters patent which impose the like duty in that island, are prefaced with the same declaration of its "having been conquered by his Majesty during the late war."

I should be glad to know who was the magnanimous general that commanded at the attack, or what ships were employed to conduct the forces destined for the reduction of this island of Tobago, on which there was not a single inhabitant. I should not be displeased to read the history of

———" *their fierce bustles*

" *With periwinkles, prawns, and  
" muscles."*

the only enemies they could find to encounter. This island has incontestibly belonged to the crown of Great Britain for more than a century, and was granted by Charles the First to William Earl of Pembroke

broke in 1628,—who not taking possession of it, it was afterwards, 17 November, 1664, granted by Charles II. to James Duke of Courland, under the acknowledgment of providing a forty-gun ship, compleatly armed and equipped, to assist the king or his successors whenever he should be engaged in war with any other King, Prince, or state (except only the King of Poland.) This island, by the failure of the succession of the house of Kettler, as Dukes of Courland, indubitably reverted again to the crown of Great Britain, and was, long before the late war, included in the commission of the Governor of Barbadoes, as well as the islands of Dominica and St. Vincent's, which commission, *quoad hæc*, was necessarily obliged to be revoked before Governor Melville's commission, which bears date 9th April 1764, could take place.

Whatever reason there may be to call Grenada, or even Dominica and St. Vincent's, on which there were some inhabitants, conquered countries; yet to found any claim to this duty from Tobago, as a conquered island, is too absurd to require any answer.

But

But the fact is—this pretended prerogative was never thought of, until long after the assurances given in his Majesty's letters patent of 7th October 1763.— For on 26th March 1764, his Majesty published other letters patent, wherein he says, ' that having  
 ' thought fit to declare to his parliament  
 ' his gracious intention of reserving to the  
 ' public use whatever sums should be produced by the sale of lands belonging to  
 ' him in the *ceded* " [not conquered] "  
 ' islands, he by that proclamation, and by  
 ' the instructions to the commissioners in  
 ' said letters patent mentioned, impowers  
 ' the said commissioners to sell and dispose  
 ' of the said lands, under and subject to such  
 ' rents, reservations, and conditions, as are  
 ' therein particularly expressed and declared.' Under the assurances contained in this proclamation, that they should be intitled to hold any lands they might purchase upon the terms and conditions therein mentioned, many people embarked themselves and their fortunes for the West Indies, nor had they the least intimation such terms were to be changed, till long afterwards; for although, on the 20th of  
 June



June following, letters patent imposing the said duty did pass the seal ; yet such letters patent *were not published in the usual manner in the London Gazette*, and consequently very few of the parties concerned were acquainted therewith. But a rumour that such duty was intended to be imposed, being spread abroad in the West Indies, previous to the sale of lands in the island of St. Vincent, the commissioners for the sale of those lands did so much apprehend that the sales would be thereby injured, and people be prevented from becoming purchasers, that they took particular pains to contradict it, declaring, as the fact really was, that they had received no instructions to alter or change the terms and conditions on which they were before directed to sell them ; and my memory much fails me if Sir William Young, Bart. the first commissioner, did not write and publish a letter in the Antigua Gazette, to induce people to believe that they were not to be subjected to that tax — If I am mistaken, I beg that Gentleman, who is now in England, to set me right, as I do not wish to deceive or mislead.

But

But supposing the letters patent of the 20th of June, 1764, to have been made as public as possible, their notoriety would not make them less illegal, although I doubt not but it was their *illegality* which prevented the publication of them in the London Gazette.

It is by some people insisted indeed, that as the land belonged to his Majesty, as lord of the soil, he had a right to lay what imposition on it he thought proper, before it was sold or otherwise disposed of.—That he had a right to take the rents, issues, and profits thereof, I do not dispute, but he possessed that right in common with any other land-holder, but no longer enjoyed it than while he had possession of the land: and I dare any lawyer to say, that the King has a right, by his prerogative, to lay any tax or duty on any inhabitant or lessee of any of his demesne lands in England, or any other part of his dominions.—He may indeed lease or dispose of such lands under such covenants, reservations, conditions, and rents as he thinks proper, but has not, by law, the power of raising one single penny by way of tax, aid, or benevolence



volence, “ without grant of parliament,  
 “ or for longer time, or in any other man-  
 “ ner, than the same is or shall be granted.”

I therefore hesitate not to assert, that the letters patent of the 20th June, levying the tax complained of, in the island of Tobago, would have been contrary to law, and of no validity, even although his Majesty had not given the lands to the public, which by his declaration to parliament, repeated in his letters patent of the 20th March, 1764, he had engaged to do.—But such monies being given to the public as before mentioned, the taxing the commodities of the growth of the islands to the amount of  $4\frac{1}{2}$  per cent. is virtually retracting his promise made to the public, which he cannot do without forfeiting his royal word. The lands themselves belonged to the public by virtue of that promise; for no one will deny, but that, by a grant of the profits of land, the land itself is conveyed; so it follows, that reserving a *quit rent*, or any other part of the profits, is in fact retaining such proportion of the land itself, as the value of the rent or annual sum amounts to, or, which is the same thing,

F

it



it renders the land worth so much less to the purchaser. The lands in Tobago did not, upon an average, sell for more than 2*l.* *per* acre; but as it requires at least 50*l.* *per* acre to settle lands in the West Indies, 4  $\frac{1}{2}$  *per cent.* upon the commodities of such land is an addition to the price of 125 *per cent.* *per* acre: and therefore, if the purchasers gave no more than 40*s.* upon a supposition such duty was to be exacted of them, the public will receive less than a moiety of what it might otherwise be supposed the land would have sold for.—If (which is the real state of the case) the purchaser bought the lands on a perfect conviction that no such tax could legally be demanded of him, should it now continue to be arbitrarily exacted, he will be forced to pay more than double the price at which he agreed to purchase the lands.—If therefore there still remains any doubt with respect to the illegality of the imposition, it is clear that, if it is at all due, it would be due to the public, and not to his Majesty.—I recollect but one other point of view in which this matter may be placed.—It may be suggested, that notwithstanding

standing the letters patent of the 14th March, 7th October 1763, and 26th March 1764, those of the 20th June 1764 having passed prior to any of the sales, and while the land was the King's; though such letters patent cannot legally, and consistent with law and the constitution, intitle his Majesty to levy the  $4 \frac{1}{2}$  *per cent.* thereby imposed as a tax or duty, yet that they may and ought to operate so as to intitle his Majesty to receive it as a condition or reserved rent, under and subject to which the land was sold. But neither will this argument avail, if the tax of  $4 \frac{1}{2}$  *per cent.* should be considered as a rent reserved; neither his Majesty nor the public can now have the least colour of right to receive it, as the grants by which the lands appear to have been conveyed to the several purchasers expressly convey the same, together with all *rents, issues, profits, commodities, &c.* to the same belonging or appertaining, upon such terms, and subject only to such quit rents, conditions, and reservations, as are contained in the said grants, which terms and conditions were published and proclaimed to the persons present at each

F 2

respective



respective sale of lands, by order of the commissioners, and were the same with those mentioned in the letters patent of the 26th March 1764, no other terms or conditions whatsoever relative to the payment of any duty, or otherwise, being mentioned at such sale.

But allowing, for a moment, that the letters patent of the 20th June, 1764, did virtually revoke those before-mentioned of 14th March, 7th October, 1763, and 26th March, 1764, which fixed and established a legal constitution for the *ceded* islands, it must also be granted that the said letters patent of the 20th June, 1764, were not only virtually, but actually revoked by subsequent ones, bearing date 9th February, 1765, appointing Hugh Græme, Esq; one of the commissioners for disposing of the said lands, *pursuant to the instructions* before given the said commissioner. By these instructions, which are thus renewed by the said letters patent of the 9th February, 1765, and recited in the grants of the land to each purchaser, the lands were directed to be, and actually have been conveyed to the respective purchasers, their heirs and assigns, for ever, subject only to the conditions



ditions expressed in the said grant, of which this tax is not one : nay, the very pretence of equality under which it is suggested to be reasonable and expedient, and of importance to the *other* sugar colonies, that the like duties should take place in the ceded islands, is false in fact. I have before mentioned those islands, the inhabitants of which do not pay the tax, and have shewn that those which do, or at least those of the island of Barbadoes, not only imposed it on themselves by act of assembly, but that such imposition was the price paid for the fee simple of the lands, at a time when they were settled and cultivated so as to be of great value : whereas the lands in the ceded islands have not only been sold for the utmost value that could be obtained for the same, but are also burthened with an heavy tax of 6*d.* sterling per acre, which none of the other islands are liable to, and are also subject besides to the other expensive and difficult conditions mentioned in the grant, which the owners of lands in the other islands are not bound to perform.

Thus, without paying the  $4\frac{1}{2}$  per cent. the purchasers of land in the *ceded* islands are obliged to bear burthens unknown in  
the

the other islands, but which they endeavour to support with patience, as they were the terms under which they purchased;—though it would surely be more consistent with good policy to assist the purchasers in the settlement of their estates, by applying the price of their lands, and the quit rents, in making roads, and erecting such public edifices as are most wanted, than by creating duties which are clearly illegal, to add to those difficulties which too many will find unsurmountable. I think, from what has been said, I am justified in concluding, that in every point of view whatsoever, the levying the duty of  $4\frac{1}{2}$  *per cent.* is inconsistent with law and equity, and contrary to the constitution, as well as to sound policy.

I shall leave it to abler pens to confute the pretension now set up of his Majesty's having a right to levy taxes in a conquered country, by virtue of his prerogative royal. I always have been taught to think, that when the British arms conquered any country, the common law of the land always was supposed to accompany them. If it does not, I am sure our conquests must be  
fatal



fatal indeed, and when we think we are vanquishing our enemies, we are only forging fetters for ourselves and our posterity. In the case of the West India islands, this prerogative is exercised, after a constitution has been given them by his Majesty's royal proclamation.—If such exertion of the prerogative is legal, I shall, before long, expect to see it exercised on the two Florida's, and probably on some other parts of America.—As to Canada, which has yet had no constitution given to it, if this doctrine prevails, it lies at the King's mercy;—and what a miserable situation are the inhabitants of those countries, as well as of the East Indies in, if, at any time hereafter, a future bad minister to a future bad king, shall think proper to levy taxes on them. If the infatuated inhabitants of Great Britain shall acquiesce in this claim of power, and suffer their fellow-subjects and countrymen in the colonies to be thus arbitrarily taxed at the will of the King, they will too late find, how little able they will be to defend their own liberties, if they should hereafter be invaded.—The great security we at present have, is the  
right



right of being taxed only by our representatives; but if once it is in his Majesty's power to raise taxes on the British dominions abroad, by virtue of his prerogative royal, that right will be rendered very precarious:  $4\frac{1}{2}$  per cent. on the produce of Bengal alone, would amount to a sufficient sum, without grant of parliament, to pay and maintain armies, by whose assistance, *if any future King should think fit*, neither the representatives nor the people would have any thing left to grant.



**F I N I S.**

